

REMARKS

This paper is responsive to the final Office Action mailed November 28, 2007. A Request for Continued Examination (RCE) is filed concurrently with this Amendment and Response and addresses the issues remaining in this application.

The Examiner has maintained the 35 U.S.C. § 101 rejection and directs Applicant to *Ex parte Lyell*, 17 USPQ2d 1548 (Bd. Pat. App. & Int. 1990), and more recently *IPLX Holdings, L.L.C. v. Amazon.Com, Inc.*, 430 F.3d 1377 (Fed. Cir. 2005). Applicant thanks the Examiner for this level of review.

IPLX does not apply to the present invention because the current claims are not a method of use but functional logical steps. Claims must clearly define the subject matter covered by the claims so infringement can be known. *IPLX*, arose in the context of online purchasing, the claims were unclear because they relied on user-based actions. This issue does not arise in the context of Applicant's claims. As stated by Applicant, there is no rule that prevents functional steps and physical elements from coexisting as long as infringement is clear.

In the spirit of expediting prosecution and judicial economy, Applicant has amended the claims. Support for new claims 92-103 is found in Figures 1A and 1B and the specification at paras. [0075]-[0085]. No new matter has been added by way of this amendment.

In accordance with MPEP § 714.04, Applicants must provide support for patentability over the cited art. No method in the cited art teaches the steps of

claim 92 in the suggested combination. In addition, independent claim 92 includes the steps of "... receiving a reference identifier assigned by the central billing database" and "activating with the central billing database the reference identifier placed on the vehicle using the communication means." Smart cards are not used or activated in central databases using a communication means as claimed by Applicant (i.e., a communication means having a communication means number).

Other obvious novelties includes the pass number of claim 93, the time allotment of claim 95, a waiting step for a verification of claim 96, the return of advertising or complementary payment information of claims 97 and 98, the deactivation of the reference identifier of claim 99, the calculation of a charge of claim 100, the calculation of a dynamic price premium of claim 101, or even a preauthorization of payment of claim 102.

Conclusion

Applicant thanks the Examiner for his patience. The claims were submitted and first prosecuted well before the *IPLX* holding by the Federal Circuit. Applicant submits that while all previous claims were and remain in condition of allowance, the newly amended claims are also in proper condition for allowance, and such action is earnestly solicited. All grounds of rejection raised by the Examiner are now moot in light of the newly amended claims.

The Commissioner is hereby authorized to charge any underpayment or credit any overpayment to Deposit Account No. 22-0259 or any payment in connection with this communication, including any fees for extension of time,

The Commissioner is hereby authorized to charge any underpayment or credit any overpayment to Deposit Account No. 22-0259 or any payment in connection with this communication, including any fees for extension of time, that may be required. The Examiner is also invited to call the undersigned if such action might expedite the prosecution of this application.

Respectfully submitted,

Date: 2/28/08

By: Michael J. Turgeon
Michael J. Turgeon
Reg. No. 39,404

Vedder Price P.C.
222 N. LaSalle St., Suite 2600
Chicago, Illinois 60601
phone: (312) 609-7716
fax: (312) 609-5005